

# **Summary of External Comments Received on the FY 2008 National Water Program Guidance March – April 2007**

## **Alaska:**

- 1) Comment: Funding sources for fish tissue monitoring should be better described.

Response: Fish tissue monitoring is eligible for funding under a number of EPA grants, including section 106 program grants. The list provided in the Guidance is not intended to be a comprehensive list of all possible funding sources.

- 2) Comment: Expand monitoring under the National Coastal Condition Report to include Alaska waters.

Response: EPA is evaluating options for future National Coastal Condition Reports and will consider expansion to address the gulf of Alaska as part of that process.

- 3) Comment: Support for charging fees for NPDES permits:

Response: EPA is supporting the development of grant incentives for States that have adopted NPDES permit fees.

- 4) Comment: EPA should work with other Federal agencies to clarify definition of “waters of the United States”.

Response: EPA is coordinating with the U.S. Army Corps of Engineers to develop guidance for determining jurisdiction under the CWA. This guidance has not yet been released, so it would be premature to reference this document in the National Water Program Guidance.

- 5) Comment: EPA should better define strategies for supporting States and community water systems in complying with existing and new drinking water regulations.

Response: EPA agrees that compliance with drinking water regulations is a complex challenge and is supporting compliance efforts with a range of grant and program efforts.

**Massachusetts:**

- 1) Comment: Suggestion that EPA revise the measure relating to TMDL completion to include TMDLs completed by States but not yet approved by EPA.

Response: EPA recognizes the need for prompt EPA action on TMDLs submitted for approval and will work to assure timely action. EPA believes, however, that the Clean Water Act requirement for EPA approval of TMDLs suggests that the measure should count TMDLs as complete only after EPA approval. Further, it would be difficult to revise this measure as it is an OMB approved PART measure.

**Montana:**

- 1) Comment: the Guidance should give more attention to headwaters and the needs of headwaters States such as Montana.

Response: EPA recognizes the importance of protecting the high quality of headwaters and agrees that protection is less expensive than clean-up. EPA agrees that water systems like the Missouri River headwaters are important to meeting water quality goals and will continue efforts to address these issues.

- 2) Comment: Additional support is needed for water monitoring from EPA and USGS.

Response: EPA recognizes the importance of water monitoring and has made this work a top priority for FY 2008. EPA will continue to work with USGS to assure that water monitoring programs are coordinated.

- 3) Comment: Support for watershed protection, such as Targeted Watershed Protection Program, should be expanded.

Response: EPA agrees that watershed management is a key strategy for meeting water quality goals and is working to expand technical assistance of other tools for this work. For example, in April of 2007 EPA issued a Capacity Building Strategy for Local Watershed Organizations to its Regional offices to help guide these efforts.

- 4) Comment: EPA should work more closely with State-wide watershed planning.

Response: EPA recognizes the need for close cooperation among Federal, State and local organizations interested in watershed protection and will continue and expand efforts to improve coordination.

## **Oregon:**

- 1) Comment: Concern for lack of 2000 baseline of impaired waters in Oregon.

Response: FY 2008 Guidance uses an updated 2002 baseline for the impaired waters measure rather than the 2000 baseline.

- 2) Comment: Restoration for some pollutant like temperature often takes many years.

Response: EPA agrees that restoration results often take years and has accounted for this in setting targets. EPA agrees that a measure showing progress toward implementation of efforts to restore impaired waters would be useful and is in the process of evaluating options related to such a measure.

- 3) Comment: Storm water measure data is not available.

Response: EPA is only requesting numbers of facilities covered, not detailed information from a database. This data is necessary to demonstrate program scope and workload

- 4) Comment: Definition of Tribal permits current is unclear.

Response: EPA will clarify definitions of this and other measure terms provided on the EPA Strategic Plan website ([www.epa.gov/water/waterplan](http://www.epa.gov/water/waterplan)).

- 5) Comment: Definition of “waters primarily impaired by nonpoint pollution” is unclear.

Response: EPA defines the terms “primarily NPS-impaired” and “partially or fully restored” in the following manner:

By “fully restored,” EPA means that all designated uses are now being met.

By “partially restored,” EPA means either of the following two conditions are being met:

- a) A waterbody that has a use that is initially impaired by more than one pollutant, but after restoration efforts meets the criteria for one or more (but not all) of those pollutants,

or,

- b) A waterbody that initially has more than one use that is less than fully supported, but after restoration efforts one or more (but not all) of those uses becomes fully supported.

Determining whether or not a waterbody is “primarily” NPS-impaired, is left to the best professional judgment of the States. EPA does not expect the State to do a detailed analysis when making a judgment of whether a given water is “primarily” NPS-impaired, when a precise determination would be difficult.

EPA defers to the state’s definition of “Waterbody”.

**Association of State Drinking Water Associations (ASDWA):**

- 1) Comment: Concern for phrase “redouble” efforts to maintain compliance.

Response: EPA has revised this language in the *Guidance*.

- 2) Comment: Support for Regional targets and commitments as a basis for national estimates of progress.

Response: EPA agrees that Regional targets/commitments provide a useful foundation for national targets/commitments.

- 3) Comment: Expand attention to need for technical assistance.

Response: EPA agrees that technical assistance is critical to maintaining compliance and has revised the *Guidance* to better express this view.

- 4) Comment: Clarify application of sanitary surveys requirements.

Response: EPA has revised the *Guidance* to address this concern.

- 5) Comment: EPA needs to better recognize financial constraints faced by States and Tribes in complying with drinking water program goals.

Response: EPA agrees that financial constraints are a key factor relating to drinking water program performance and priority setting and has revised the *Guidance* to address this comment.

- 6) Comment: EPA should rely on existing databases to support planning measures.

Response: EPA agrees that existing databases are the preferable source of data for measures and has revised the *Guidance* to address this comment.

NOTE: Several additional editorial comments and suggestions adopted.

### **National Tribal Water Council:**

- 1) Comment: Concern expressed for the target for improving compliance rates at community water systems in Indian country.

Response: EPA shares the concern for drinking water compliance rates in Indian country at are lower than the national average and will be working with Tribes to improve these compliance rates.

- 2) Comment: Concern for time required to improve access to safe drinking water.

Response: EPA shares the concern for the time required to improve access to drinking water on Tribal lands and has made addressing access issues a top priority.

- 3) Comment: Need to expand number of Tribes with water quality standards.

Response: EPA agrees that expanding the number of Tribes with water quality standards in place is a key goal and is working with Tribes to accomplish this work.

- 4) Comment: Provide for Tribal involvement in the development of programs to address large aquatic ecosystems.

Response: EPA agrees that Tribes should be involved in the development and implementation of programs addressing large aquatic ecosystems.

- 5) Comment: Concern for EPA implementation of new guidance for use of section 106 funds for monitoring on Tribal lands.

Response: EPA will continue to work with Tribes to assure the coordinated implementation of section 106 guidance across the country.

### **New England Commissioners**

- 1) Comment: EPA should take several steps to improve efforts to reduce mercury levels in fish.

Response: EPA agrees that reducing mercury levels in fish is important and has taken several actions in this area including the recent release of guidance for developing State-wide comprehensive mercury reduction programs and listing mercury impaired waters under category “5m” of the impaired waters listing guidance and the development of statewide mercury programs in response to these listings.

- 2) Comment: EPA should not set-aside funds from section 106 grants for probabilistic monitoring strategies.

Response: EPA continues to believe that assessment of water quality using statistically valid methods is a critical improvement to the national clean water program and that dedication of section 106 funds to this work is appropriate.

- 3) Comment: Development of nutrient criteria will result in an increase in the number of waters identified as impaired and EPA should recognize this.

Response: EPA agrees that the adoption of nutrient criteria in State water quality standards is likely to result in an increase in the number of impaired waters. This increase is expected to show up in future “impaired waters baselines” and as these baselines change, EPA will consider appropriate changes to targets of restoration of impaired waters.

- 4) Comment: EPA should recognize that the maintaining a rapid pace of TMDL development will reduce resources available for implementation of TMDLs and that prompt action by EPA to approve TMDLs is important.

Response: EPA agrees that States need to find an appropriate balance between resources invested in TMDLs development and in TMDL implementation and believes that the process described in the Guidance concerning use of targets to form Region specific commitments is a good mechanism for finding this balance. EPA also agrees that prompt EPA action on TMDLs is important.

- 5) Comment: Concern for possible adjustment of section 106 funding based on State action with respect to NPDES permit fees.

Response: EPA recognizes State concern for possible changes in section 106 funding and will consider these issues carefully in final determinations concerning section 106 funding and permit fees.

- 6) Comment: EPA should focus on reducing the backlog of NPDES permits that are environmentally significant.

Response: EPA has increased its focus on environmentally significant permits by including this measure among the Agency's Senior Leadership Measures, and reporting it to the DA and Administrator. We continue to monitor overall backlog to ensure that the overall NPDES program is maintained at an adequate level.

- 7) Comment: Implementation of wadeable stream assessments needs to be improved.

Response: EPA will work with States and others to review issues associated with the wadeable streams assessments and consider appropriate changes in the context of the need to provide meaningful trend data.

- 8) Comment: Goal of restoring and enhancing wetlands needs to be reconsidered.

Response: As the measure notes, EPA believes that “net increase” in wetland acreage is an important environmental goal. EPA is working with states, tribes, and other federal agencies to better understand the quality of the nation’s wetlands and report on changes in wetland quantity and quality in the future. These future reports will build on the current inventory of wetland acreage.

- 9) Comment: Additional funding is needed to support goals of improving State wetland program capacity.

Response: EPA recognizes that funding is a significant challenge for states building wetlands program capacity and is working to identify innovative financing opportunities for states and tribes.

- 10) Comment: Documentation of environmental improvement associated with Section 404 wetlands permits needs to be clarified.

Response: EPA has revised this measure to more clearly articulate the intended purpose. Please see the final version of the National Water Program Guidance for the revised wording.

- 11) Comment: More assistance will be needed to expand use of biological metrics and assessments of wetland condition.

Response: EPA recognizes that funding is a significant challenge for states building wetlands monitoring capabilities and is working to identify innovative financing opportunities for states and tribes.

- 12) Comment: The lack of complete data with respect to environmental improvements should not be a hindrance to grant support of State programs.

Response: Although EPA values the effective use of grant dollars and is working to better link performance to grant funds, EPA expects to

continue to provide significant grant assistance to States and Tribes for environmental programs.

- 13) Comment: The continued success of the Long Island Sound protection work is linked to continued EPA support.

Response: EPA appreciates the importance of continued support for the protection of Long Island Sound.

- 14) Comment: Greater efforts to integrate programs relating to the Clean Water Act and the Safe Drinking Water Act are needed.

Response: EPA agrees that the coordination among CWA and SDWA programs can be improved and is working to advance this effort.

#### **State Environmental Results Program Consortium:**

- 1) Comment: The Guidance should more clearly describe the role of program innovations to support effective implementation of water programs.

Response: EPA agrees that innovation plays a key role in effective program management and has revised the Guidance to reflect these programs.

#### **Ground Water Protection Council:**

- 1) Comment: Measures relating to the Underground Injection Control Program should be managed as “indicator” measures without annual targets.

Response: The measures in question are included in the Office of Management and Budget (OMB) Performance Assessment and Rating Tool (PART) for the Underground Injection Control Program and OMB required that all PART measures have targets.